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1 re: . Brooklyn, New York
2 . November 19, 2013
3 OTR MEDIA GROUP, INC. . 11-01448
4 . 11-47385
5 6 Debtor. . Calendar Time:
6 9:00 A.M.
7
8 11-01448 OTR MEDIA GROUP, INC. ET AL V. THE CITY
9 OF NEW YORK
10
11 [1] ADJOURNED PRE-TRIAL CONFERENCE RE: COMPLAINT
12
13 ADJOURNED FROM: 9/28/11, 10/25/11, 11/22/11,
14 11/29/11, 12/15/11, 2/14/12, 2/23/12, 4/3/12,
15 4/20/12, 5/10/12, 7/17/12, 8/9/12, 9/27/12,
16 11/1/12, 12/10/12, 12/20/12, 1/24/13, 2/14/13,
17 4/23/13, 5/9/13, 5/14/13, 6/4/13, 6/27/13,
18 7/17/13, 8/2/13, 9/20/13
19
20 ADJOURNED HEARING (RE: RELATED DOCUMENT(S) 54
21 MOTION TO PROHIBIT/ENJOIN/RESTRAIN FILED BY
22 PLAINTIFF, GOTHAM BROAD, LLC, 57 ORDER TO
23 SCHEDULE HEARING (GENERIC), 62 SCHEDULING ORDER)
24
25 ADJOURNED FROM: 5/14/13, 6/4/13, 6/27/13,
7/17/13, 8/2/13, 9/20/13
11-47385 OTR MEDIA GROUP, INC.
[154] ADJOURNED MOTION TO CONVERT CHAPTER 11 CASE
TO CHAPTER 7 OR, IN THE ALTERNATIVE, DISMISS CASE
ADJOURNED FROM 6/29/12, 7/12/12, 8/9/12, 9/27/12,
11/1/12, 12/10/12, 12/20/12, 1/24/13, 4/23/13,
6/27/13, 7/17/13, 8/2/13, 9/20/13
[9] ADJOURNED STATUS CONFERENCE
ADJOURNED FROM: 10/25/11, 11/22/11, 11/29/11,
12/15/11, 2/14/12, 2/23/12, 4/3/12, 5/10/12,
7/17/12, 8/9/12, 11/1/12, 12/10/12, 12/20/12,
1/24/13, 2/14/13, 4/23/13, 6/19/13, 6/27/13,
7/17/13, 8/2/13, 9/20/13

ADJOURNED [4] MOTION TO USE CASH COLLATERAL

ADJOURNED FROM: 9/1/11, 9/28/11, 10/25/11, 11/22/11,
11/29/11, 12/15/11, 2/14/12, 2/23/12, 4/3/12
5/10/12, 7/17/12, 8/9/12, 11/1/12, 12/10/12, 12/20/12,
1/24/13, 2/14/13, 4/23/13, 6/19/13, 6/27/13,
7/17/13, 8/2/13, 9/20/13

[375] ADJOURNED HEARING ON THE ISSUES RAISED IN THE
DECLARATIONS [373] AFFIRMATION OF NON-COMPLIANCE:
DECLARATION OF DEBTOR'S NON-COMPLIANCE WITH CONSENT
ORDER CONDITIONALLY GRANTING MOTION OF UNITED
STATES TRUSTEE TO CONVERT CHAPTER 11 CASE

ADJOURNED FROM: 4/23/13, 6/19/13, 6/27/13, 7/17/13
8/2/13, 9/20/13

[538] MOTION FOR RELIEF FROM STAY FEE AND MOTION
TO DISMISS CASE FILED BY JOSEPH A. ALTMAN ON BEHALF
OF JANJAN REALTY CORP.

ADJOURNED CONFIRMATION HEARING

ADJOURNED FROM: 7/17/13, 8/2/13, 9/20/13

[507] ADJOURNED SECOND APPLICATION FOR
COMPENSATION FOR NOVACK, BURNBAUM & CRYSTAL, LLP
AS SPECIAL COUNSEL; FEES: \$55,314.93, EXPENSES: 0.00.
OBJECTIONS TO BE FILED ON SEPTEMBER 13, 2013. FILED
BY GARY M. KUSHNER ON BEHALF OF NOVACK, BURNBAUM &
CRYSTAL, LLP (RE: RELATED DOCUMENT(S) 51 APPLICATION
TO EMPLOY FILED BY DEBTOR, OTR MEDIA GROUP, INC.)

ADJOURNED FROM 9/20/13

[508] ADJOURNED FOURTH APPLICATION FOR COMPENSATION
FOR GOETZ FITZPATRICK, LLP AS ATTORNEY; FEES: \$190,072.50,
EXPENSES: \$4,851.11. OBJECTIONS TO BE FILED ON
SEPTEMBER 13, 2013. FILED BY GARY M. KUSHNER ON
BEHALF OF OTR MEDIA GROUP, INC.

ADJOURNED FROM: 9/20/13

[388] ADJOURNED MOTION TO ALLOW ADMINISTRATIVE
EXPENSE CLAIM AND OBJECTION TO REDUCED TREATMENT
OF ADMINISTRATIVE CLAIM UNDER DEBTOR'S FIRST AMENDED
PLAN OF REORGANIZATION FILED BY FREDERICK J. LEVY ON
BEHALF OF CARE REALTY CORPORATION

ADJOURNED FROM: 7/17/13, 8/2/13, 9/20/13

[501] ADJOURNED MOTION TO COMPEL DEBTOR TO PRODUCE
WITNESSES FOR DEPOSITIONS AND FOR OTHER RELIEF.
OBJECTIONS TO BE FILED ON 8/28/2013. FILED BY BRIAN
T. HORAN ON BEHALF OF CITY OF NEW YORK (RE: RELATED
DOCUMENT(S) 154 MOTION TO DISMISS CASE FILED BY U.S.
TRUSTEE, UNITED STATES TRUSTEE).

ADJOURNED FROM 9/20/13

[107] ADJOURNED OMNIBUS MOTION TO OBJECT/RECLASSIFY/
REDUCE/EXPUNGE CLAIMS: CLAIM NUMBER(S): 3,4, 7/8,
13, 14, 18, 19, 25

ADJOURNED FROM 5/10/12, 7/17/12, 8/14/12, 10/16/12,
11/13/12, 12/10/12, 12/20/12, 1/24/13, 2/14/13,
7/17/13, 8/2/13, 9/20/13

[470] ADJOURNED MOTION FOR ADEQUATE PROTECTION LIFT
STAY FILED BY JASON S. GARBER ON BEHALF OF 176 CANAL CORP.

ADJOURNED FROM: 8/2/13, 9/20/13

11-101448 OTR MEDIA GROUP, INC. ET AL V. THE CITY OF
NEW YORK

[68] MOTION TO QUASH. OBJECTIONS TO BE FILED ON
11/12/13. FILED BY DONALD E. WATNICK ON BEHALF OF
EDWARD F. ARRIGONI.

11-47386 OTR MEDIA GROUP, INC.

[547] MOTION TO DISMISS CASE WITH PREJUDICE, AND
BARRING REFILEING FOR NINE MONTHS. OBJECTIONS TO BE
FILED ON NOVEMBER 12, 2013 AT 4:00 P.M. HEARING ON
OBJECTIONS, IF ANY, WILL BE HELD ON: NOVEMBER 19,
2013 AT 9:00 A.M. FILED BY SCOTT D. SIMON ON BEHALF
OF OTR MEDIA GROUP, INC.

[548] FINAL MOTION FOR COSTS/ATTY FEES OF NOVACK
BURNBAUM CRYSTAL, LLP. OBJECTIONS TO BE FILED ON
NOVEMBER 12, 2013 AT 4:00 P.M. HEARING ON OBJECTIONS,
IF ANY, WILL BE HELD ON: NOVEMBER 19, 2013 AT 9:00
A.M. FILED BY SCOTT D. SIMON ON BEHALF OF OTR
MEDIA GROUP, INC.

[549] FINAL MOTION FOR COSTS/ATTY FEES OF DEBTOR'S
ORDINARY COURSE PROFESSIONALS. OBJECTIONS TO BE FILED
ON NOVEMBER 12, 2013 AT 4:00 P.M. HEARING ON OBJECTIONS,
IF ANY, WILL BE HELD ON: NOVEMBER 19, 2013 AT 9:00
A.M. FILED BY SCOTT D. SIMON ON BEHALF OF OTR

[550] FINAL MOTION FOR COSTS/ATTY FEES OF BRYAN
CAVE, LLP, AS DEBTOR'S SPECIAL COUNSEL. OBJECTIONS
TO BE FILED ON NOVEMBER 12, 2013 AT 4:00 P.M. HEARING
ON OBJECTIONS, IF ANY, WILL BE HELD ON: NOVEMBER 19,
2013 AT 9:00 A.M. FILED BY SCOTT D. SIMON ON BEHALF
OF OTR MEDIA GROUP, INC.

[551] FINAL MOTION FOR COSTS/ATTY FEES OF GOETZ
FITZPATRICK, LLP, AS DEBTOR'S COUNSEL. OBJECTIONS
TO BE FILED ON NOVEMBER 12, 2013 AT 4:00 P.M. HEARING
ON OBJECTIONS, IF ANY, WILL BE HELD ON: NOVEMBER 19,
2013 AT 9:00 A.M. FILED BY SCOTT D. SIMON ON BEHALF
OF OTR MEDIA GROUP, INC.

[552] FINAL MOTION FOR COSTS/ATTY FEES OF ROTH AND
COMPANY CPA, AS DEBTOR'S ACCOUNTANTS. OBJECTIONS
TO BE FILED ON NOVEMBER 12, 2013 AT 4:00 P.M. HEARING
ON OBJECTIONS, IF ANY, WILL BE HELD ON: NOVEMBER 19,
2013 AT 9:00 A.M. FILED BY SCOTT D. SIMON ON BEHALF
OF OTR MEDIA GROUP, INC.

BEFORE HONORABLE ELIZABETH S. STONG

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Attorney for Metropolitan
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D. CAPERS

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1 THE CLERK: Numbers 1 through 21 on the calendar,
2 all matters regarding OTR Media Group, Incorporated.

3 THE COURT: Good morning.

4 MR. KUSHNER: Good morning, your Honor.

5 THE COURT: Let's start by getting your appearances
6 on the record.

7 MR. KUSHNER: Good morning. Gary Kushner, Goetz
8 Fitzpatrick, for the debtor, OTR Media Group.

9 MR. SIMON: Scott Simon, Goetz Fitzpatrick, counsel
10 for the debtor. Good morning.

11 THE COURT: Thank you.

12 MR. CURTIN: William Curtin for the United States
13 Trustee. Good morning, your Honor.

14 THE COURT: Good morning, and thank you.

15 MS. KLAPPER: Good morning, your Honor. Hanna
16 Klapper for the IRS.

17 MR. ALTMAN: Good morning, your Honor. Appearing
18 for the landlord, Janjan Corp., Joseph A. Altman.

19 THE COURT: Thank you.

20 MR. KLEINMAN: Good morning, your Honor. Alan
21 Kleinman, New York City Law Department for the City of New
22 York.

23 MR. GARBER: Good morning, your Honor. My name is
24 Jason Garber with Silversmith & Associates. We represent a

1 landlord, 176 Canal.

2 MR. WATNICK: Good morning, your Honor. Donald
3 Watnick from the Law Offices of Donald Watnick, and we
4 represent a non-party, Edward Arrigoni.

5 MR. HORAN: Good morning, your Honor. Brian Horan,
6 also for the City of New York.

7 THE COURT: Good morning. Any other appearances?

8 MR. KUSHNER: One more, Judge.

9 MR. TROTTER: Richard Trotter from Tannenbaum
10 Syracuse & Hirschtritt on behalf of Metropolitan National
11 Bank.

12 THE COURT: All right. Good. Thank you.

13 MR. KUSHNER: And your Honor, just for the record,
14 Mr. Noe, the principal of the debtor, is also here sitting
15 behind Mr. Simon.

16 THE COURT: All right. Good to see you. You can
17 all be seated.

18 Mr. Kushner, let's start with status.

19 MR. KUSHNER: Okay, your Honor. On September 20th
20 we were before you for a hearing, and at that hearing there
21 was a record made regarding the final disposition of this case
22 in the form of a consensual dismissal, and when I say
23 consensual, it was between the major parties in the case, the
24 debtor, the Office of the United States Trustee, Metropolitan

1 National Bank, and the City of New York, and because other
2 parties were not involved in those discussions in a material
3 way we spent these last few months preparing the application
4 and noticing them.

5 So since that point, your Honor, really what we've
6 been involved with as debtor's counsel is dealing with a
7 number of administrative matters, and the debtor's continued
8 on to honor its administrative duties. It's entered into cash
9 collateral stipulations. It's continuing on in state court
10 battling the battle that exists with respect to the
11 legalization of signs.

12 I'm happy to report that during the last two months
13 or so I was able to settle a number of claims, one of which is
14 before you today, your Honor, in the form of the IRS. That is
15 essentially the status. The debtor has met with Metropolitan
16 National Bank, and I understand that it has reached an
17 agreement, actually signed documents last evening converting
18 what would be an otherwise matured loan into a term loan so
19 that going forward we have an understanding as to what our
20 obligations are to Metropolitan National Bank, but these are
21 the types of things that have happened over the last two
22 months since we were last before you, your Honor.

23 THE COURT: All right. Well, it sounds like the
24 time has been productive. Is it fair to assume that the path

1 contemplated by the parties' statements on the records back in
2 September remains the same path of the case?

3 MR. KUSHNER: Yes.

4 THE COURT: That is to say the consensual --

5 MR. KUSHNER: We are proceeding with the motion to
6 dismiss, your Honor.

7 THE COURT: Okay. All right. Well, who else would
8 like to be heard on status?

9 MR. CURTIN: Your Honor, did you want comments on
10 the motion to dismiss now or just status? I don't have
11 anything on status.

12 THE COURT: Okay.

13 MR. CURTIN: But I do have comments on the motion.

14 THE COURT: Does it make sense to move then to the
15 motion to dismiss? Because my sense is that that really is
16 the most significant matter on the calendar today and that it
17 will likely --

18 MR. KUSHNER: Respectfully, your Honor, I would have
19 thought that that would have been the last thing because there
20 are a number of matters that still need the Court's
21 assistance.

22 THE COURT: What would you -- what do you propose
23 that we address next?

24 MR. KUSHNER: I'd like to address the agreement that

1 the debtor reached on the objections to claims motion, which
2 is number 13 on your Honor's calendar this morning. That is
3 an omnibus motion that was made with respect to a number of
4 creditors, and just to refresh your Honor's memory, there were
5 two prior orders entered before, disposing with certain
6 claims, but --

7 THE COURT: I recall.

8 MR. KUSHNER: -- the majority of that motion
9 remained, so --

10 THE COURT: I could not have told you how many of
11 the claims had been previously resolved, but I know that we
12 have been resolving in part and adjourning the debtor's claims
13 motion as part of overall case management.

14 MR. KUSHNER: Well, the big one, your Honor, was a
15 contested motion. The IRS had put in opposition, and I'm
16 happy to report that with the hard work of Ms. Klapper and I
17 and Mr. Clemente -- Scottodiclemente, we've come to an
18 agreement in principal, even to the extent of perhaps
19 prematurely submitting an order to your Honor's order desk I
20 believe it was yesterday.

21 I'll go over the agreement in principle, but I'd ask
22 your Honor to hold off on signing that order because it came
23 to our attention last night that we need to go over the math
24 on credits for adequate protection payments.

1 THE COURT: Okay.

2 MR. KUSHNER: And that's still a moving target, but
3 in principle we've come to an understanding, and essentially
4 what the understanding is is that the debtor has agreed with
5 the Internal Revenue to an allowed secured claim which totals
6 \$116,856.54. It represents a large reduction because
7 originally as filed the secured component of the IRS claim
8 included penalties of approximately \$84,000, and that under
9 the agreement has been recast to a general unsecured claim.

10 The secured claim will be paid by the debtor in 60
11 consecutive monthly installments commencing on February 1st,
12 2014 with statutory interest at the rate of \$2,099.76 per
13 month. The IRS has essentially agreed to take a one-time
14 distribution on the unsecured portion in an amount which
15 worked out to be about 24 cents on the dollar, which was what
16 was contemplated under the debtor's plan, and that's a payment
17 of \$9,523.35. The math may change slightly again because of
18 some issue as to whether or not full credits were given to
19 adequate protection payments that had been made all along, and
20 I suspect that Ms. Klapper and I can work out that issue
21 within the next few days and give your Honor some direction as
22 to whether you should go ahead and sign that order or look at
23 it anyway, but what --

24 THE COURT: We did review it, and I think it was in

1 the form of stipulation and order. Isn't that right?

2 MR. KUSHNER: It was. Yes, it was, and that's
3 essentially what the agreement is with the Internal Revenue
4 Service.

5 THE COURT: Okay. So in view of the anticipated
6 dismissal of the case, how does the agreement with respect to
7 the claim in the bankruptcy case --

8 MR. KUSHNER: The order would survive.

9 THE COURT: Okay.

10 MR. KUSHNER: And --

11 THE COURT: And the agreement would survive?

12 MR. KUSHNER: That's correct.

13 THE COURT: Okay.

14 MR. KUSHNER: And it represents what we feel is a
15 fair compromise, and certainly addresses the IRS's concern for
16 getting payment on its tax claim in a manner that the debtor
17 can reasonably afford.

18 THE COURT: That makes sense. I anticipated that
19 was the answer, but I wanted to be sure I wasn't missing
20 something.

21 What other claims are left, and will any be the
22 subject of similar efforts by the debtor? My notes seem to
23 suggest that 3, 7, 14, 18, 19, 29, and 33 --

24 MR. KUSHNER: Yes. All of those --

1 THE COURT: -- one of which must be IRS. Number 3
2 is the IRS.

3 MR. KUSHNER: 3 is the IRS. Two of those, and I'm
4 remiss that I don't know which ones were resolved, but for the
5 record, to the extent that they haven't been resolved, the
6 motion will, if your Honor wants to handle this way, will be
7 withdrawn by the debtor without prejudice to either party's
8 rights to challenge the validity of a claim in a court of
9 proper jurisdiction, and I think that that is the best way to
10 handle that, and I'd be happy to submit an order to that
11 effect if your Honor agrees with the way that I suggested we
12 treat it.

13 THE COURT: All right. Who else would like to be
14 heard with respect to the claims motion? In substance, based
15 on the record before me, I would mark the claims motion to the
16 extent it's directed to claim number 3 of the Internal Revenue
17 Service, as settled as reflected in the record, the parties to
18 submit a proposed stipulation and order or confirm that which
19 has been submitted is that which the Court should take up and
20 enter, and that it is withdrawn in part as reflected in the
21 record as to the remaining claims, and you'll be submitting an
22 order with respect to that as well. Would anyone else like to
23 be heard on the claims motion?

24 All right. No response. So we've -- I think we've

1 addressed number 13 on the calendar, and I think this is the
2 right way to go.

3 Mr. Kushner, where should we go next?

4 MR. KUSHNER: So if we walk back to matters 1 and 2,
5 that involves an adversary proceeding which is being primarily
6 addressed by Gotham Broad. The debtor doesn't really have a
7 stake in that, and Gotham Broad is not even here today I don't
8 think. I think he filed something on the docket yesterday
9 asking for a continuation.

10 So I don't want to speak for him. The debtor's
11 really not involved in that proceeding at this point. It's
12 something that is between the City and Gotham Broad. Perhaps
13 the City has some thoughts about that.

14 THE COURT: I'd like to hear from the City. It
15 certainly seems to the Court that if this Chapter 11 case is
16 dismissed, those matters should be marked off the Court's
17 calendar, those adversary proceedings.

18 MR. KLEINMAN: Yes. That's correct, your Honor.

19 THE COURT: All right. Mr. Kushner.

20 MR. KUSHNER: Yes. Number 3, your Honor, is the
21 motion to convert the case. I think that that would in effect
22 be superseded by the debtor's own motion to dismiss the case
23 on consent. So I guess your Honor should perhaps rule on that
24 in conjunction with the voluntary motion to dismiss the case.

1 This is the motion by the United States Trustee --

2 THE COURT: Yes, number --

3 MR. KUSHNER: -- which was joined by the City.

4 THE COURT: Right. Number 506 on the docket from
5 late of August of this year.

6 MR. KUSHNER: And that's been carried by virtue of
7 the consent order and various related issues. I would imagine
8 that that would be rendered moot, and also should be marked
9 off.

10 MR. CURTIN: Your Honor, William Curtin for the
11 United States Trustee, and Mr. Kushner and I did not discuss
12 that -- this beforehand, but as I sit here the way I would
13 prefer to handle it, because when we get to the motion to
14 dismiss you're going to hear that the bank is going to have
15 some additional language comments on the order, so that if
16 your Honor were to dismiss the case today we won't be
17 submitting the order for a couple of days.

18 So if it's okay with your Honor and the debtor, what
19 I'd like to do is keep that on the calendar, and then I will
20 file a letter once we get the order finalized withdrawing that
21 motion.

22 MR. KUSHNER: The debtor has no objection to that,
23 your Honor.

24 THE COURT: All right. So it's a question of

1 awaiting the disposition by decision today and entry of an
2 order of that matter. We'll come up with a holding date I
3 think perhaps for that motion. To the extent that the motion
4 to dismiss is granted and we don't have a holding date for the
5 status conference, that's a bit of a loose end, but I don't
6 think it's an unacceptable extent.

7 All right. Status is of course the next thing on
8 the calendar, and you've addressed that already.

9 MR. KUSHNER: So I can move on to 5, your Honor?

10 THE COURT: I think that's cash collateral.

11 MR. KUSHNER: Okay. Cash collateral, there are
12 orders that are entered through October, and I believe that
13 your Honor should have the -- is it the nineteenth interim
14 order, which goes through the end of the case. It's already
15 been submitted, your Honor. The bank and the UST have signed
16 off on it, so I think for procedural purposes it probably
17 makes sense to enter that order before the case is dismissed.

18 THE COURT: All right. I'd like to hear from others
19 with respect to cash collateral. The suggestion is that there
20 has been or will soon be a submitted order, Mr. Kushner, and
21 I'm sure you were clear and I'm sorry I didn't catch
22 precisely. We have the nineteenth interim order from November
23 -- excuse me, October 11th, and you'll be submitting another
24 interim order?

1 MR. KUSHNER: Does that have -- is it through
2 October 31st? I should have been prepared, your Honor. I'm
3 sorry.

4 THE COURT: I should know the answer to that
5 question, having signed and entered the order.

6 MR. KUSHNER: Mr. Simon says that I am incorrect.
7 It would be the twentieth interim order, and it would cover
8 the period from November 1st through --

9 THE COURT: I have quite a complete set, except I
10 don't have before me the twentieth. We'll pull that up from
11 the docket.

12 MR. KUSHNER: It would have gone to your order desk,
13 not to the docket first.

14 THE COURT: So it's not yet entered. All right.
15 We'll pull that order up just to be sure we have all the
16 pieces in place.

17 MR. KUSHNER: Sorry, your Honor, on that.

18 THE COURT: No problem. We'll --

19 MR. KUSHNER: Okay. The next one is number 6. That
20 is the adjourned hearing on the compliance or non-compliance
21 with the consent order. Again, that I think should be marked
22 off as moot. That was actually adjourned in favor of moving
23 forward with the dismissal motion --

24 THE COURT: All right.

1 MR. KUSHNER: -- from the last time, so I don't know
2 how the City wants to handle that, but --

3 THE COURT: Subject to the dismissal of the case
4 proceeding as anticipated.

5 MR. KLEINMAN: Yes. I think the same arrangement
6 that the U.S. Trustee suggested should apply with this.

7 MR. KUSHNER: And the debtor's okay with that.

8 MR. CURTIN: That's fine with me also, your Honor.
9 It makes sense.

10 THE COURT: All right. We'll have an adjourn date
11 as a holding date. Okay. Good. Thank you.

12 MR. KUSHNER: Number 7, your Honor.

13 THE COURT: Stay relief.

14 MR. KUSHNER: Okay. This is a landlord's motion.
15 It's Janjan's motion for stay relief. We think certainly Mr.
16 Altman can make his presentation if the Court wishes, but
17 again, we think that this is also rendered moot by the
18 dismissal, but if Mr. Altman and the Court have a different
19 view, then we don't have any visceral objection to it, so I
20 think it doesn't really mean anything.

21 THE COURT: Yes.

22 MR. ALTMAN: Yes, your Honor. With reference to the
23 application, I would like to have an order granting it, your
24 Honor, if possible. In case something delays the entry of the

1 dismissal we need to have an order that says the stay is
2 lifted and we can go forward in state court to address the
3 issues. My client does have a lot at stake here. There are a
4 lot of penalties that have been incurred as a result of the
5 finds from the City, so I would ask that the Court does enter
6 such an order.

7 THE COURT: All right. If Mr. Kushner and anyone
8 else who would like to be heard, the matter before the Court
9 is Janjan Realty Corp.'s motion for relief from the automatic
10 stay. It arises in the context of all of the other issues in
11 this case, and the underlying issues are well-traveled ground
12 and familiar to the Court. In a general way the standard here
13 is the standard articulated in the Sonnax case, whether there
14 is cause for relief from the automatic stay to permit the
15 parties to pursue their rights under the applicable law in a
16 different forum, and I can see that the record certainly
17 suggests that a number of those factors would weigh in favor
18 of that path.

19 I appreciate that the case seems to be headed for a
20 dismissal, and I appreciate all the reasons for that, and I
21 think it makes sense. That being said, there's a motion on
22 today and the movant, the landlord, has indicated an interest
23 in proceeding.

24 Mr. Kushner, do you contest the relief being sought

1 on that?

2 MR. KUSHNER: We didn't contest it.

3 THE COURT: I see there's no opposition.

4 MR. KUSHNER: Because of what we believe will be the
5 case, and that is the dismissal, but if I may just suggest is
6 that if the Court's going grant it unopposed, then at least we
7 settle an order or make the order conditional on again
8 dismissal. It has the same effect as granting the same type
9 of relief that the movant is getting.

10 THE COURT: Well, it seems to me that the question
11 before the Court is whether there's grounds for relief from
12 the automatic stay or precisely whether there's cause, and I
13 don't hear -- I don't see in the record nor hear from the
14 debtor nor yet any party in interest, though I haven't asked
15 and I will, whether there is -- whether anyone else would like
16 to be heard. I see at least a prima facie case for cause for
17 relief. I'll note that notice was a few days short, but I'm -
18 - this is our second hearing, so that took care of that issue
19 I think. Maybe there's still a couple days, but I'm prepared
20 to deem it substantially adequate under the circumstances.

21 Would anyone else like to be heard with respect to
22 the motion for relief from the automatic stay?

23 MR. KLEINMAN: Well, your Honor, the City be in
24 favor of your Honor approving the motion. This is one of many

1 landlords who will end up being caught holding the bag for
2 liabilities incurred based on the signage of OTR, and to the
3 extent that the landlord seeks to remedy that situation and
4 come into compliance, the City is in favor of that, and would
5 recommend that the Court sign that order now rather than at
6 any time later on.

7 THE COURT: All right. Would anyone else like to be
8 heard with respect to the motion?

9 For all the reasons reflected in the record, I'm
10 satisfied that there is a good basis for the relief that's
11 sought, which is relief from the automatic stay, and that
12 there is cause. The factors articulated by the Second Circuit
13 in the In Re: Sonnax Industries case weigh in favor
14 permitting the parties to pursue litigation in another forum,
15 in the state court specifically, and the debtor has indicated
16 that there is no opposition, but first and foremost the movant
17 has established cause for relief. So for all the reasons
18 reflected in the record, the motion is granted.

19 May I ask you to submit an appropriate proposed
20 order? We don't seem to have a proposed order.

21 MR. KUSHNER: Can I get that sent to me first before
22 it's submitted to the Court, your Honor?

23 THE COURT: Would you be able to provide a copy to
24 Mr. Kushner?

1 MR. ALTMAN: Sure, your Honor. That would be fine.

2 THE COURT: Are you looking for relief beyond -- the
3 relief that I see warranted in the record would be an order
4 that in substance states that the stay is granted to the
5 extent necessary for your client to pursue its rights under
6 applicable law with respect to the debtor. I would not be
7 inclined to waive the 14-day stay under the Bankruptcy Rules
8 or grant any other relief.

9 MR. ALTMAN: I understand.

10 THE COURT: Okay. All right. If it's possible as a
11 courtesy I would encourage you to extend that courtesy to Mr.
12 Kushner. Please submit an appropriate proposed order.

13 MR. ALTMAN: Will do.

14 THE COURT: All right. Thank you.

15 MR. ALTMAN: Okay. Can I be excused now, your
16 Honor?

17 THE COURT: Yes. You can be excused. You're
18 welcome to stay, but you're free to go.

19 MR. ALTMAN: Okay. Thank you.

20 THE COURT: All right.

21 MR. KUSHNER: Number 8, your Honor, is the hearing
22 on the adjourned confirmation of the debtor's amended plan,
23 which I believe would be rendered moot, so I think your Honor
24 should mark that off.

1 THE COURT: It will be marked off and so ordered.

2 MR. KUSHNER: Now we have a series of fee
3 applications.

4 THE COURT: We do.

5 MR. KUSHNER: Can we go through those?

6 THE COURT: Yes.

7 MR. KUSHNER: 9 is Novack, Burnbaum.

8 THE COURT: One second. Let me catch up with my
9 paperwork. Oh, we've looked. We do not find the twentieth
10 interim cash collateral order in the ESS order box.

11 MR. KUSHNER: By the time I get back to my office
12 and your Honor's still on the bench you will have it. It was
13 supposed to be sent yesterday.

14 THE COURT: And it may well have been and we're just
15 overlooking it, but if you could help us with that, that would
16 be useful. And the nineteenth interim cash collateral order
17 goes through October 31st?

18 MR. KUSHNER: That's right.

19 THE COURT: All right. Number --

20 MR. KLEINMAN: Your Honor, if I may? The City has
21 an objection to the various fee requests, and I simply suggest
22 as a matter of efficiency that that be considered first
23 because if the City's objection be considered favorably by
24 this Court, there'd be no reason to go through all of them,

1 so --

2 THE COURT: Well, let's take -- let's hear the first
3 one, and I'll hear your objection, but it's always helpful to
4 hear first from the proponent, and then of course you'll have
5 all the time you need to respond, but I appreciate that it
6 should be necessary to hear everything absolutely as many
7 times as possible -- as necessary, but only as many times as
8 necessary. It's a good point.

9 All right. Numbers 9 and 17 on the calendar today
10 concern fee applications of Novack, Burnbaum & Crystal as
11 special counsel.

12 MR. KUSHNER: With respect to Novack, the matter
13 that's been marked as number 9 on the Court's calendar is
14 actually merged into the final fee application. If you
15 recall --

16 THE COURT: I see. Okay. I should have caught
17 that. So number 9 has been superseded. May I mark it
18 withdrawn? And that will be so ordered. Let's move to number
19 17.

20 MR. KUSHNER: Okay. Novack, Burnbaum was the firm
21 that was retained as special counsel. There are a number of
22 special counsel, but in particular what Novack, Burnbaum did
23 was handle several ECB matters before the ECB and various
24 appeals, special types of appeals that found their way from

1 ECB rulings to the Board of Standards and Appeal.

2 The final fee application of Novack, Burnbaum
3 requests a payment of the holdback in connection with the
4 first interim application covering the period August 25th,
5 2011 through July 20th, 2012 in the amount of \$22,000 --
6 22,549.61, payment in the amount of \$30,115.97 in connection
7 with the second interim application which had been filed and
8 which your Honor just I guess marked off, and a payment of all
9 prior holdbacks from the monthly payments authorized under the
10 OCP order.

11 Novack, Burnbaum was kind of a hybrid type of
12 retention. Initially they were contemplated as being hired as
13 an OCP. We instead filed the first fee application for them,
14 but from that point after for a period of a number of months
15 they received up to \$6,000 as a cap as set forth in the
16 application. So what Novack, Burnbaum is seeking for this
17 final fee application is \$92,318.14 covering all of the work
18 that they did and prior holdbacks.

19 I have, as in all of my cases, your Honor, given the
20 Court what I felt was a lengthy description of the types of
21 services that Novack, Burnbaum -- I know your Honor has a full
22 calendar, so if I may defer having to repeat what's already in
23 the application?

24 THE COURT: I think the thing to do would be to

1 focus on the objections that have been raised because there
2 are some concerns raised and some concerns about the
3 compensation and the aggregate amount of the compensation, how
4 it compares to the carve-out which was significantly smaller.

5 The numbers in the Metropolitan National Bank response
6 indicate \$827,000 in carve-out and \$1,860,765.16 in total
7 requested fee application sums, and of course, some of those
8 concerns are directed to the prospect of the case not being
9 dismissed.

10 Again, it does seem from the record that there is a
11 -- assuming the prospect of dismissal we're really thinking
12 about different issues than the carve-out and the
13 disproportion between the amount sought, but it's a -- and
14 they're not carved out. I think we also had some concerns
15 addressed by the Office of -- or expressed by the Office of
16 the United States Trustee. Is that right, Mr. Curtin?

17 MR. CURTIN: Well, I think we've resolved the issue
18 as far as the carve-out. There's going to be some language I
19 understand in each of the orders that provides that none of
20 the fees are going to be paid from cash collateral absent
21 consent of the bank, and that obviously applies anything under
22 the carve-out.

23 So again, assuming that the case is dismissed, that
24 resolves that issue.

1 MR. KUSHNER: That is correct, and I did pass by a
2 template of an order for all of the professionals for Mr.
3 Davis's approval, and he's come back with his comments to that
4 template. We've agreed on -- the U.S. Trustee has agreed on
5 the language, and that is a fact that we will not make any
6 payments during the pendency of this case with the bank's cash
7 collateral. In fact, we've actually tried to make
8 arrangements with the debtor and the other professionals and
9 the bank as to going forward what the debtor can afford to all
10 of its professionals and to insure that the bank's deal is met
11 with the debtor, but as far as the objection that was filed by
12 Metropolitan National Bank, that was in fact resolved, and
13 counsel is here.

14 THE COURT: It would be helpful to have that
15 confirmed on that record.

16 MR. TROTTER: Yes, your Honor. Richard Trotter from
17 Metropolitan National Bank. As counsel just alluded to we
18 didn't file a response to the final fee applications.
19 Metropolitan National Bank takes no position on whether or not
20 the applications should be granted or in what amount, but as
21 the U.S. Trustee mentioned, we'd just like to insure that none
22 of those new amounts requested in the final applications are
23 paid out of cash collateral because the amount provided for,
24 the aggregate amount provided for in the interim cash

1 collateral orders to date for legal and professional services
2 has already been exhausted, and the new amounts requested when
3 combined with those amounts already granted would be far in
4 excess of what the bank has consented to up to this point.

5 So with that understanding, Metropolitan National
6 Bank has no -- takes no position on whether or not the
7 applications should be granted.

8 THE COURT: All right.

9 MR. CURTIN: I just want to clarify one thing, your
10 Honor. The amount approved has exceeded the cash collateral,
11 or the amount paid has not so there hasn't been any --

12 THE COURT: That's a useful clarification on the
13 record. It's reflected in the submissions, but it's good to
14 have those words heard in the courtroom as well.

15 Would anyone else like to speak in favor of the
16 application?

17 All right. I'd like to hear from the City of New
18 York. I have your response and your opposition, your
19 objection seeking a pro rata share of any payment to the
20 professionals based on the City's post-petition administrative
21 expense claim. Come on up to the podium. Mr. Kleinman,
22 please proceed.

23 MR. KLEINMAN: Good morning, your Honor. Alan
24 Kleinman for the City of New York. So we have I think stated

1 fully our position with respect to this in the papers. The
2 City has an administrative claim here which if these things
3 are in a bankruptcy the administrative claims should all be
4 treated pro rata. If this matter is being dismissed and no
5 longer subject to the jurisdiction of this Court, and if any
6 payments will be made after this debtor is no longer subject
7 to the jurisdiction of this Court, I guess I don't understand
8 exactly what it would mean for this Court to give approval to
9 items which will not be paid until after this Court no longer
10 has jurisdiction.

11 So both on the equity ground with respect to the
12 City's claim at this point with the matter in bankruptcy being
13 equal on a pro rata basis with the other thing -- with the
14 other claims of the professionals, or this case is being
15 dismissed, then I don't understand the purpose of going
16 through and issuing orders with respect to these amounts.

17 THE COURT: I think there was some response filed by
18 the debtor on especially that second issue, the sort of "Why
19 are we doing this?" question I'll state it colloquially. I
20 would invite Mr. Kushner to reply, and of course I'm sure
21 you've had a chance to review as well document number 568, but
22 Mr. Kushner, it's a good question that's been raised here on
23 what may well be the last day or the last few days of this
24 case if we go down the path that the parties have indicated

1 and the Court has indicated seems to be the appropriate path.

2 Could you respond to Mr. Kleinman's concerns?

3 MR. KUSHNER: Sure. As to why final fee
4 applications are before the Court, the debtor and its
5 professionals believe that there are two motivating factors.
6 Number one, the retention orders that your Honor signed
7 required us in order to be allowed the fees that we were
8 awarded on an interim basis and then certainly for final
9 approval, require that such an application be made. It is
10 conceivable, and this is a hypothetical, your Honor, and
11 certainly not addressed specifically in the Bankruptcy Code,
12 that if the case is dismissed and the debtor and any one of
13 its bankruptcy professionals are faced in a situation where we
14 have to commence a litigation to collect our fees, it would
15 conceivably be a defense available to the debtor that we
16 weren't awarded anything by the Bankruptcy Court by virtue --
17 and we did not comply with your Honor's order, so that
18 theoretically that defense could be available. That's number
19 one.

20 Number two, the Bankruptcy Code itself under 330 and
21 331, which I suspect is the major reason why your Honor, bless
22 you, puts in the standard retention order that we have to
23 comply with these sections. I believe that as to the multiple
24 layers of administrative claimants that these provisions of

1 the Bankruptcy Code and the retention orders carve out a
2 special circumstance for the debtor's professionals that
3 require us to submit for your Honor's approval and
4 consideration, the Office of the United States Trustee's
5 consideration, and all other creditors the need to have that
6 matter fixed, that claim fixed, and that's the reason why we
7 did it, your Honor.

8 THE COURT: All right. Would anyone else like to be
9 heard on this matter? Mr. Kleinman, I'll let you raise any
10 further questions you'd like to raise because I think the
11 process points you raise are important ones. It seems to me
12 that were the case not on a track toward dismissal it would be
13 in a very different place, but I think Mr. Kushner makes some
14 good points about the requirements both of the prior orders
15 entered in the case and of the Bankruptcy Code, and I think
16 Mr. Curtin noted that it's a question of approving the
17 application with respect to approval of fees as opposed to
18 directing that they paid, and certainly I take it, and Mr.
19 Kushner, you can confirm this, that payment while the case
20 remains in this Court is not contemplated by the debtor. Is
21 that right?

22 MR. KUSHNER: All this is is an -- the answer is
23 yes, and the endeavor is to fix our claim. That's what --

24 THE COURT: Put a number on it. Right. Does that

1 help?

2 MR. KLEINMAN: Well, I don't know if "fix the claim"
3 helps. To the extent that there --

4 THE COURT: Fix in the sense of putting a number on.

5 MR. KLEINMAN: Well, then I would think that if it's
6 a question of this Court assigning a number, then the City as
7 an administrative claimant, has that same right. If it is
8 something --

9 THE COURT: I have before me your motion for
10 approval of administrative claim. I might be considering
11 that. What I have is an argument saying in effect that "We
12 deserve payment just as much as they do, even more perhaps,
13 and so don't pay them without giving us a pro rata share of
14 that money."

15 MR. KLEINMAN: Well, I --

16 THE COURT: But there's no payments being made by
17 the debtor that's been confirmed on the record not only by the
18 debtor, but also by the Office of the United States Trustee.

19 MR. KLEINMAN: Well, then maybe, your Honor, there's
20 some way to parse this a little more finely. The reality of
21 this is that if in fact nothing's going to be paid, then the
22 question of who gets paid from the debtor or the priority of
23 claims of creditors against the debtor will then become a
24 state law issue, and so that should then get litigated in

1 state court, this Court no longer having jurisdiction over
2 that issue, and whatever the state law result will be, will be
3 the result here, and so I'm having a hard time understanding
4 what it would mean for this Court to fix a particular number.

5 If this Court I guess wants to say that it
6 understood that the fees were okay with respect to the
7 Bankruptcy Code in an amount to be determined under state law,
8 that would -- maybe that would be an acceptable resolution,
9 but it seems to me to have this Court --

10 THE COURT: That would be an unusual form of order
11 in response to a fee application.

12 MR. KLEINMAN: Well, I think this is an unusual
13 situation.

14 THE COURT: But I appreciate the situation that
15 concerns you. Anything further?

16 MR. KLEINMAN: Okay. And let me just say one other
17 thing.

18 THE COURT: Please.

19 MR. KLEINMAN: So Mr. Kushner raises this concern
20 about the status of their claims. In any case, the various
21 professionals would have, irrespective of the bankruptcy
22 retaining order, a quantum meruit claim and they would be
23 entitled to pursue that claim in state court under state law,
24 and so whatever happens here is not the resolution of payment

1 of these attorneys fees. All I'm suggesting is there really
2 is no mechanism in the Bankruptcy Code for this kind of
3 situation where the case is being dismissed as opposed to
4 being converted or a plan being confirmed.

5 There really is no provisions which govern this, and
6 so it seems to me that either you have parity with respect to
7 administrative claimants or that you recognize that the matter
8 is now going to be subject to state law, and it would be
9 improper I suggest for this Court to fix a number there
10 because that will become a matter of state law, and not a
11 matter of a bankruptcy law in a case that has been dismissed,
12 and over which the Bankruptcy Court no longer has
13 jurisdiction.

14 THE COURT: All right. Thank you.

15 Mr. Curtin, I would like to hear your position on
16 the motion. I'm always interested in the position of the
17 Office of the United States Trustee with respect to fees, and
18 also specifically with respect to the form of order that might
19 be entered if the relief is granted.

20 MR. CURTIN: Thank you, your Honor. William Curtin
21 for the United States Trustee.

22 Your Honor, we don't have an objection to the fee
23 applications in light of the pending dismissal. Let me just
24 focus my comments a little bit. First of all, there is no

1 application under 503 for an administrative claim of the City.
2 If there were I don't think it would be a proper application
3 at this point anyway.

4 As far as filing a final fee application in a case
5 that's about to be dismissed, my understanding is that is
6 actually the proper way to handle the dismissal of a case. I
7 will --

8 THE COURT: That's consistent with my understanding
9 as well.

10 MR. CURTIN: I will admit that it doesn't happen in
11 many cases. It --

12 THE COURT: That is also consistent with my
13 experience.

14 MR. CURTIN: It does happen. There are many cases
15 that get dismissed without a final application. In my opinion
16 that is, while it happens, not the proper way and not under
17 the Code the way things are supposed to happen. The way that
18 things are supposed to happen is that the fee applications are
19 supposed to be filed. Parties have an opportunity to weigh in
20 if they wish, and your Honor enters final fee orders.

21 Again, going back to what I said before, and your
22 Honor said it several times, that these fees are not going to
23 be paid during the bankruptcy case. The -- as far as the
24 effect or the force that your Honor's order will have in any

1 hypothetical state court proceeding that occurs in the future,
2 I don't know. I don't know what it would be, but it is what
3 it is, and to state the obvious, you're a bankruptcy judge.
4 This is the Bankruptcy Code. The Bankruptcy Code requires fee
5 applications. They've been filed, and our position, we don't
6 have an objection.

7 THE COURT: All right. Would anyone else like to be
8 heard? I think it's been helpful to address these issues
9 fully in the context of the Novack, Burnbaum application.
10 They are substantially similar in the other matters that will
11 come up. Mr. Curtin -- Mr. Kushner, you rose when I posed the
12 question, but do you have anything to add to the record?
13 Otherwise I'm prepared to rule.

14 MR. KUSHNER: I think Mr. Curtin and I think the
15 Court gets it. There is no 503(b) application. So to the
16 extent that the City is seeking a claim, our opposition
17 pointed out that having it file it within three or four days
18 of the case being dismissed doesn't give us a chance to deal
19 with it at this point. There's no request for those payments,
20 but the 503(b) status that they're seeking, by the way, is --
21 those ECB penalties are mired in state court appellate
22 matters. So I want the record to be clear that we're not
23 agreeing to the City's claim, and that yes, we will, you know,
24 deal with those assertions at the appropriate state court

1 level.

2 Getting back to what is before the Court, which is
3 the fee application, I think that your Honor has our reply. I
4 believe that your colleague, Judge Craig -- Chief Judge Craig
5 dealt with something similar to this, if not exactly on all
6 fours in the Acme case case -- Acme Baking case rather, which
7 we've cited in our papers, and i think it does reflect what
8 Mr. Curtin says in that that is the protocol of what you're
9 supposed to do under the Bankruptcy Code with respect to
10 debtor's professionals' fees before the dismissal of the case.
11 So procedurally I think we've done the right thing.

12 THE COURT: All right. Thank you. I appreciate
13 your submissions and your arguments. I think the colloquy on
14 these issues has been helpful for the record, helpful to the
15 Court, hopefully also of assistance to the parties.

16 For all the reasons reflected in the record, I'm
17 going to approve the motion for costs and attorneys fees of
18 Novack, Burnbaum, Crystal, LLP as reflected in the record, and
19 ask that Mr. Kushner submit a proposed order on consent as to
20 form of the Office of the United States Trustee. Let's --

21 MR. KUSHNER: And Metropolitan National Bank too,
22 since they did in fact require special language.

23 THE COURT: Certain language. All right. Thank
24 you.

1 Let's turn to the next fee motion, which is number
2 18 on the calendar, the final motion with respect to --

3 MR. KUSHNER: I think 10 is -- oh, okay

4 THE COURT: I think 10 and 18 go together.

5 MR. KUSHNER: Yes, your Honor. I'm sorry.

6 THE COURT: As to 10, this is Goetz Fitzpatrick and
7 18 Goetz Fitzpatrick. Mr. Kushner, your firm.

8 MR. KUSHNER: Yes, your Honor. This is --

9 THE COURT: Well, let's go instead to 10 and 20.
10 That would be the -- as to 10 I will mark it withdrawn and
11 superseded by 20. Let's proceed to 20.

12 MR. KUSHNER: Okay. Goetz Fitzpatrick, as you know,
13 was retained as debtor's Chapter 11 counsel. The application
14 as filed, your Honor, includes a fifth interim request
15 covering the last period. I have to get my application. I'm
16 sorry.

17 THE COURT: All right.

18 MR. KUSHNER: Between -- that covers the period
19 August 1st, 2013 through today, your Honor, November 19th,
20 2013. That sought \$69,390 for fees, \$1,444.80 for
21 reimbursement of expenses. As your Honor knows, as I put in
22 the application, some of that time was estimated. I have
23 today shown to Mr. Davis and Mr. Curtin a rough unbilled time
24 for the period of October 27th, which was the day after we

1 filed the fee application on October 28, through today. So
2 it's a little bit of a moving target. That amount is subject
3 to increase, your Honor, but to an amount that has to be fixed
4 after the U.S. Trustee reviews it, if that's okay. I know
5 it's not a perfect process when you do fee applications.

6 THE COURT: Difficult in the end game for sure.

7 MR. KUSHNER: That's right. That's right. The
8 application also seeks a fourth interim request for
9 \$194,923.61, the first holdback from our first fee application
10 in the amount of \$23,038.80, the second holdback from the
11 second interim application of \$40,628.50, and a third holdback
12 of \$49,485 even, for a total request for new payment of
13 \$378,910.71.

14 Again, as I pointed out in the actual application
15 itself, I believe we gave the Court a detailed explanation as
16 to the large amount of work that we did in this case, some
17 successful, some not so successful, but service of this
18 application was made on all -- of notice of the application
19 was made on all creditors and parties in interest, and the
20 application itself was sent to the interested parties.

21 THE COURT: For the sake of clarity, because the
22 same objections in substance I believe have been asserted, do
23 we have an objection of the City, and because some questions
24 have been raised by the Office of the United States Trustee,

1 could you respond to those concerns and --

2 MR. KUSHNER: There's been substantive objection by
3 the City to any fee application as to amount of fees sought or
4 reimbursement of expenses sought. The City's objection was as
5 stated, as Mr. Kleinman had stated is if we get it, the City
6 gets it, and --

7 THE COURT: My understanding of the issues is that
8 they are no different in this application than they are in
9 others, both the arguments and the responses, and therefore,
10 unsurprisingly the Court's conclusion, but I'd like to just
11 confirm that on the record with respect to the position of the
12 Office of the United States Trustee.

13 MR. CURTIN: That's correct, your Honor. The only
14 difference here is that there is additional time that I
15 haven't seen yet, so I'd just ask for a few days to take a
16 look at that, and before I agree to the final number, which I
17 don't think will be any more than \$25,000 more than -- I think
18 that's what -- I looked at it very quickly, but I think that's
19 what it says.

20 MR. KUSHNER: And I also -- that's correct, and I
21 also have to give that Mr. Noe to approve as well, so that
22 being said, that is a correct statement.

23 THE COURT: Would anyone else like to be heard? Mr.
24 Kleinman.

1 MR. KLEINMAN: The City repeats objection which I
2 stated before, and again, the City is not making any specific
3 objection with respect to any item of any of the professional
4 applications.

5 THE COURT: I appreciate the points, and I think we
6 had a full consideration of them on the prior matter.

7 For all the reasons reflected in the record, Mr.
8 Kushner --

9 MR. KUSHNER: And just for the sake of completeness,
10 Metropolitan National Bank's objection was the same as it was
11 to Novack, Burnbaum. It was a generic objection objecting to
12 the payment of fees during the case. The orders that will be
13 submitted for -- the order submitted for Goetz Fitzpatrick
14 will be the exact same template to the satisfaction of the
15 U.S. Trustee and Metropolitan National Bank. So again, that's
16 been resolved.

17 THE COURT: For all the reasons reflected in the
18 record, the application for costs and fees of Goetz
19 Fitzpatrick as set forth in the record will be granted as
20 reflected in the record, and you'll submit a proposed order on
21 consent as to form of the Office of the United States Trustee
22 and Metropolitan National Bank.

23 MR. KUSHNER: Thank you, Judge.

24 THE COURT: All right. Let's move to number 18.

1 Excuse me. Number 10 we marked withdrawn as superseded by
2 number 20, and that will be so ordered.

3 MR. KUSHNER: I think actually 11 is a non-fee
4 application matter that we haven't yet addressed if I'm
5 correct.

6 THE COURT: It seems so, yes.

7 MR. KUSHNER: That should be marked off. This is
8 again their request -- I haven't heard from Mr. Levy. He is a
9 colleague and he's not here. I suspect that whatever issues
10 are raised there will be raised outside in state court.

11 THE COURT: That will be marked off and so ordered.

12 MR. KUSHNER: The next one is the City's motion to
13 compel witnesses for deposition. We've already resolved that.
14 If the Court may recall, we had a deposition scheduled that
15 was then abated as a result of the consensual dismissal.

16 THE COURT: May I mark this withdrawn without
17 prejudice?

18 MR. KLEINMAN: Yes, your Honor.

19 THE COURT: Thank you. Withdrawn. So ordered.

20 MR. KUSHNER: 13's already been dealt with. That's
21 omnibus motion and the IRS agreement.

22 14 is Mr. Garber's motion.

23 THE COURT: Yes. 176 Canal Corp.

24 MR. GARBER: That's correct, Judge. Mr. Kushner, I

1 --

2 MR. KUSHNER: We'd be happy to treat it the same way
3 that we did for Mr. Altman's client, to have your Honor grant
4 it if so appropriate, if your Honor feels it's appropriate,
5 and then settle an order or submit an order on my consent.

6 THE COURT: There may be some shortcomings in terms
7 of service, but based on the entire record I would be prepared
8 to conclude that the relevant parties in interest are present
9 and had sufficient notice.

10 Mr. Garber, let me hear from you. Would you like to
11 proceed with your motion?

12 MR. GARBER: I'm sorry, your Honor?

13 THE COURT: Would you like to proceed with your
14 motion?

15 MR. GARBER: Of course, your Honor.

16 THE COURT: Please proceed.

17 MR. GARBER: Well, your Honor, we're seeking an
18 order lifting the stay. We'd like to -- we intend immediately
19 if your Honor grants the motion to go to the civil court and
20 to start a holdover summary proceeding to recover possession
21 of the west wall from the OTR. They entered into a lease with
22 us some years ago, and they've acted rather inappropriately,
23 which has cost our client some money, and in fact we're still
24 facing some outstanding violations at the Environmental

1 Control Board, which I'll have to try in a couple of months,
2 and I'm sure that we'll never be able to recover those funds
3 from OTR, although we have an indemnification provision in our
4 lease.

5 So clearly we're looking to proceed immediately,
6 your Honor, and we will do so so long as your Honor signs the
7 order that we will be submitting today. My only question,
8 your Honor, to Mr. Kushner is why does he need a copy of our
9 order at the same time that your Honor does? What does he
10 intend to do with it, if anything?

11 THE COURT: Well, that's a question for you to put
12 to Mr. Kushner in a conversation perhaps between yourselves.
13 I will note just because I think you have used the word,
14 "immediately" several times that the Bankruptcy Code provides
15 that any order granting relief from the automatic stay is
16 stayed itself for a period of 14 days, and in the context of
17 real property it is not my practice to waive that 14-day stay.
18 So immediately would be under the condition of those 14 days.

19 MR. GARBER: Then in that case, your Honor, as soon
20 as possible. If that's two weeks, then so be it.

21 THE COURT: Understood. So let's turn just for a
22 moment to the substance of the motion. You seek relief from
23 the automatic stay in order to pursue your rights in the state
24 court forum. This invokes the standard of the Sonnax

1 Industries case in the Second Circuit, and I'm satisfied, and
2 I'll say this in a summary way because of the length of the
3 morning calendar, that many of those factors weigh in favor of
4 the relief you seek, and yet also that the relief is
5 unopposed.

6 Would anyone else like to be heard with respect to
7 this motion? No response. Mr. Kleinman, of course.

8 MR. KLEINMAN: The City has the same position with
9 respect to the other lift stay motion. So we support their
10 motion, your Honor.

11 THE COURT: All right. No other parties wishing to
12 be heard, for all the reasons reflected in the record, the
13 motion will be granted. Please submit an appropriate proposed
14 order.

15 MR. GARBER: Will do. Thank you very much, your
16 Honor.

17 THE COURT: All right. Thank you. And you as well
18 are welcome to stay, but free to go.

19 MR. GARBER: Thank you, Judge.

20 THE COURT: Let's move to motion to quash, number 15
21 on the calendar.

22 MR. WATNICK: Good morning, your Honor. Donald
23 Watnick. I represent non-party, Edward Arrigoni, who has made
24 this motion to quash a subpoena that was issued by the debtor.

1 Mr. Arrigoni is, of course, a non-party to this case. He has
2 no involvement in this proceeding, so he has -- he really has
3 no horse in this race.

4 He's a 78-year old man. He resides in the state of
5 Connecticut, and he knew nothing about this proceeding until
6 debtor's counsel started contacting him and ultimately issued
7 a subpoena to ask him about his business from 33 years ago.
8 The business was known as New York Bus Service. Mr. Arrigoni
9 sold it approximately eight years ago. From what we
10 understand, debtor's counsel wanted to ask Mr. Arrigoni about
11 a sign that New York Bus had 33 years ago on a building in the
12 Bronx known as 330 Bruckner Avenue, and this motion has been
13 necessitated because debtor's counsel went forward with a
14 subpoena.

15 They refused to withdraw the subpoena, and what's
16 interesting and what makes this subpoena completely in our
17 view without any basis, frivolous, is that the City -- the
18 debtor initially issued its subpoena on September 27th. We
19 understand from the proceedings before this Court today that
20 on September 20th they -- debtor's counsel represented they
21 were going to dismiss this bankruptcy.

22 After we told them that it was -- the subpoena was
23 improperly served, they reissued the subpoena on October 17th.
24 Again, this was long after they had said they were going to

1 dismiss the bankruptcy. The motion should be granted to quash
2 the subpoena. We've set forth -- the City has set forth in
3 its papers why it should be granted, for the simple that Mr.
4 Arrigoni's subpoena never should have been served because this
5 is a case that's about to be dismissed. Why they are serving
6 a subpoena for discovery of a non-party when they're about to
7 dismiss this case makes absolutely no sense. It makes even
8 less sense when you consider the fact that they wanted to ask
9 him, or so they say, about the legality of a sign when they've
10 acknowledged in this case, they've acknowledged in various
11 proceedings that the legality of the signs are not an issue in
12 this case. They're an issue in state court. They're an issue
13 for the City tribunals, but they're not an issue in this case.

14 In their opposition papers they try to suggest that
15 they need the deposition because it's relevant to what they
16 call, quote, "contested proceedings," but what's very telling
17 is that they don't identify those contested proceedings.
18 What's even more telling is in their papers they say they need
19 the deposition for a BSA proceeding. Well, a BSA proceeding
20 is not a proceeding before this Court, so essentially what
21 they've acknowledged is that they're seeking his deposition
22 for the purposes of use in another case, and we submit that
23 that is completely improper under the rules of this Court,
24 under the rules of most courts in fact. You don't seek

1 discovery in one case for the sole purpose of using it in
2 another case.

3 We submit, your Honor, that there was absolutely no
4 basis for the subpoena. Mr. Kushner actually has acknowledged
5 to me that the subpoena never should have gone forward, and
6 for that reason we would ask that the subpoena be quashed. We
7 also ask that our client, Mr. Arrigoni, be awarded his
8 attorneys fees for having to make this motion in view of the
9 fact that the subpoena never should have been issued, and once
10 it was issued and once we objected to it, OTR should not have
11 forced us to have to incur -- our client to have to incur the
12 time and expense of having to make this motion.

13 THE COURT: Mr. Kushner, let me hear from you. I
14 don't quite understand how to reconcile the debtor's position
15 as reflected in the November 12th filing with the debtor's
16 position in every other matter before the Court in this case.

17 MR. KUSHNER: You wouldn't because -- on the set of
18 facts that Mr. Watnick gave us, so hopefully --

19 THE COURT: Well, I have some general familiarity
20 with the case, Mr. Kushner.

21 MR. KUSHNER: Absolutely. The request for Mr.
22 Arrigoni's testimony stemmed long before September 27th.

23 THE COURT: Let's stay with your position as you
24 stated on November 12th.

1 MR. KUSHNER: Okay, but I want --

2 THE COURT: One thing I'm sure is that you would not
3 somehow be trying to get a last scoop of discovery using
4 federal process as you voluntarily seek to dismiss the case.

5 MR. KUSHNER: Agreed, but again the process of
6 trying to get Mr. Arrigoni to testify and then to issue the
7 subpoena occurred well before the dismissal concept, your
8 Honor. In fact, Mr. Watnick -- that's why Mr. Simon is here.
9 Mr. Simon was told by Mr. Watnick to issue the subpoena on
10 the 27th as opposed to our request to voluntarily go forward
11 with friendly discovery. Again, Mr. Arrigoni's testimony
12 relates to a sign at 330 Bruckner where the debtor's
13 application or permit was pulled after numerous years of being
14 valid for the singular purpose of getting him to testify to
15 one thing, that is whether New York Bus, his company, was ever
16 a tenant at that property, the significance being that if they
17 weren't then it was an advertising sign as opposed to an
18 accessory sign.

19 I agree with Mr. Watnick. This thing went too far.
20 I did try to call him last night, okay, and the debtor is
21 prepared to withdraw that subpoena, okay, at this point
22 without prejudice to going into state court, but from the time
23 that we sought the discovery to the time that we are here
24 today many things evolved, including the idea of having this

1 case dismissed.

2 THE COURT: The thing I'm trying to understand is
3 why you filed these papers on November 12th.

4 MR. KUSHNER: Because I hadn't looked at those
5 papers. Mr. Simon did. I don't think that they should have
6 been filed, and I told Mr. Watnick that last night. That's
7 why, and I tried to rectify it. I don't think that the debtor
8 should have gone forward with it. As the head of the
9 department of my firm, I don't think that -- I think it should
10 have been resolved before that, your Honor, but there was no
11 malice intended as it seems that Mr. Watnick's presentation
12 was, and certainly the debtor would be opposed to sanctions or
13 costs. That's not what's before the Court.

14 THE COURT: You just indicated it was an
15 unauthorized act of your firm --

16 MR. KUSHNER: It was a --

17 THE COURT: -- on the record, which is a pretty
18 strong statement for a lawyer to make.

19 MR. KUSHNER: Yeah, but having second thoughts, your
20 Honor, I don't practice with a carpetbag. I tell the Court
21 straight out what probably should be done and shouldn't be
22 done, and I'm not trying to push the envelope here. We think
23 that Mr. Watnick's position at this juncture of the case,
24 having had the dismissal motion filed, probably should have

1 ended before that pleading was filed, your Honor.

2 THE COURT: The subpoena has been withdrawn.

3 MR. WATNICK: Your Honor, could I respond?

4 THE COURT: Of course you may.

5 MR. WATNICK: Mr. Kushner said a couple of things
6 that merit response. First he said that I requested the
7 subpoena. That's simply not correct. Second, I think the
8 record will bear -- will show that this subpoena was issued on
9 October 17th. That was after the -- Mr. Kushner stood before
10 this Court and said he wanted to dismiss this case.

11 THE COURT: Which was a September event.

12 MR. WATNICK: Correct. Third, what's very relevant
13 here is that Mr. Kushner is the person who signed the papers
14 which he now just said were unauthorized by his firm. His
15 signature is contained on the opposition to our motion, and
16 fourth and most important on the issue of fees, this is a
17 motion that never should have had to have been made. The
18 subpoena never should have been served. Once we objected to
19 it they should have withdrawn it.

20 There's no relevance to this proceeding at all.
21 It's clear that not only was it an unauthorized act of his
22 firm, but he was seeking unauthorized discovery because the
23 sole purpose of it was to get discovery in another -- was to
24 use it in another proceeding. His papers, the papers that Mr.

1 Kushner signed, which he now says were unauthorized by his
2 firm, acknowledge that. They say they want the discovery to
3 use in the BSA, which is not this Court, and again it's
4 fundamental. You can't ask for discovery in one case for the
5 sole purpose of using it in another case.

6 For that reason we ask that the subpoena be quashed,
7 but we also ask that Mr. Arrigoni be awarded the attorneys
8 fees that he has incurred unnecessarily in order to respond to
9 this subpoena that never should have been issued by Mr.
10 Kushner in order to respond to the objection to our motion
11 signed by Mr. Kushner that never should have been filed in
12 this Court, and to now have to appear in order to argue this
13 motion.

14 Now, last night Mr. Kushner suggested to me that he
15 would withdraw the subpoena, however, he wanted something in
16 return. He wanted my client to give him an affidavit.

17 MR. KUSHNER: That's not --

18 THE COURT: Negotiations between the parties are
19 best left there I think. I have your statements. I have your
20 arguments. I have your motion. I have now re-read quickly
21 the notice of motion and the brief that you filed.
22 Interesting and difficult issues here. In some context
23 perhaps not so difficult, though still interesting in other
24 contexts. Here's the point. If this case were in a different

1 posture, if it were six months ago, I think the considerations
2 as to whether this discovery were somehow within the
3 relatively broad ambit of permissible discovery would be
4 different.

5 That's not where we are. We're in a very different
6 situation. I don't see your request for costs or sanctions in
7 your motion. I appreciate that broadly speaking it is the
8 view of many courts, including the Second Circuit, that this
9 Court might have the authority sua sponte to do something like
10 that. I decline to exercise that sua sponte authority. Your
11 motion seeks the quashing of a subpoena which in a fairly
12 professional -- in a highly professional assessment of the
13 record counsel has indicated should not have been -- as of the
14 last position taken last week, is withdrawn on the record,
15 rendering I believe the relief sought by the motion moot.

16 I would have on the record granted the motion to
17 quash and left for another day or perhaps for conversations
18 between the parties, which you shall have an opportunity to
19 undertake fairly shortly the question of whether in view of
20 the mistake that was made, and they do happen, and there's not
21 a person in this courtroom or on this bench who hasn't made
22 one at some point in the flurry of effort to move forward that
23 sometimes happen that you need clarification in response.

24 I will note also that I take very seriously the

1 signature of an attorney on a document. That means a lot to
2 me. I check it. I want to know who is on the hook for the
3 statements in papers, and so the fact that, Mr. Kushner, you
4 did sign those papers, that's something that's a piece of the
5 picture.

6 As for today the subpoena has been withdrawn, and I
7 think that means that the motion can be marked off because the
8 relief has -- you've accomplished your purpose by the
9 proactive statement of counsel to withdraw the subpoena.
10 Whether there's a question of cost shifting that needs to be
11 addressed by the Court and some appropriate resolution that
12 needs to be made between the parties, that I leave to your own
13 consultations and whatever you file, but I'm not going to act
14 sua sponte today.

15 I'd like to move through the rest of the matters on
16 the calendar if we can quickly, and if not, to take a break
17 fairly soon in part to recover my voice, to review some of
18 these matters, and to permit whatever productive conversations
19 can happen among the parties.

20 I think this takes us to the motion to dismiss. Is
21 that right?

22 MR. KUSHNER: No. There's two more fee
23 applications, your Honor.

24 THE COURT: Number 16 is a motion to --

1 MR. KUSHNER: I'm sorry. There's three more fee
2 applications.

3 THE COURT: We'll go -- we'll pass over 16 for the
4 moment then and move to number 18.

5 MR. WATNICK: Your Honor, may I be excused?

6 THE COURT: You might actually stick around for a
7 couple minutes if you don't mind.

8 MR. WATNICK: Sure. I'm glad to stick around, your
9 Honor.

10 THE COURT: I'm sorry. I should say that more
11 professionally. You're free to go, but I also encourage you
12 to stay.

13 MR. WATNICK: I'm inclined to stay. Thank you, your
14 Honor.

15 THE COURT: Thank you.

16 MR. KUSHNER: All right. 18 is Bryan Cave's --

17 THE COURT: I'm sorry. I took the wrong folder. My
18 mistake. Please proceed. This is a final fee application of
19 the debtor's ordinary course professionals.

20 MR. KUSHNER: Yes. I'm sorry.

21 THE COURT: Please proceed.

22 MR. KUSHNER: Yes, your Honor. The debtor's
23 ordinary course professionals are the team of lawyers that
24 were hired to perform routine day to day services for the

1 debtor in connection with the business. They included the
2 general counseling of Ariel Holzer, who was responsible for
3 preparing leases and various contracts, Bartfield & Knopfler,
4 which did a lot of collection work for the debtor, Goldman,
5 Harris which did specialized appellate work before the BSA,
6 and Cohen, Hochman & Allen, which did a majority of their work
7 before -- violation hearings before the ECB.

8 As to these four professionals, I'll address Holzer.
9 Holzer is seeking approval of his October request, which is
10 for \$5,894.39, prior holdbacks from prior interim payments
11 that were made pursuant to the ordinary course professional
12 order, which I assume the Court is familiar with.

13 THE COURT: Yes.

14 MR. KUSHNER: Of 25,646.50, for a total payment --
15 new payment of \$31,540.79, and for final approval of the
16 monthly prior awards which took place from the time that they
17 were retained through September of \$128,232.25. Again, the
18 specific services that were rendered by Holzer are addressed
19 in the OCP final application. I don't want to belabor the
20 record, especially with a full courtroom.

21 Do you want me to go through each professional or do
22 you want to do it seriatim?

23 THE COURT: I think it's set out in an appropriate
24 way in the papers, and again, many or most or perhaps even all

1 of these professionals have provided services that have been
2 reflected on the record of these proceedings from time to
3 time. We have similar concerns that I think will be addressed
4 in a similar way, addressed -- raised by Metropolitan National
5 Bank and the City of New York.

6 Is there anything that you would like to add to the
7 positions that have been taken previously? Subject to the
8 same limitations and constraints, I'm inclined to proceed as
9 we've proceeded with the other orders, but Mr. Kleinman,
10 anything to add to the record?

11 MR. KLEINMAN: I would just request that whatever
12 orders get submitted as a result of today's proceedings be
13 circulated to the City as well so that we can look
14 specifically at the language to think about what effect, if
15 any, it might have with respect to subsequent state court
16 proceedings.

17 THE COURT: Mr. Kushner, can you work with that?

18 MR. KUSHNER: No problem.

19 THE COURT: Excellent. All right. Anything to add
20 to the record? Seems like no.

21 For all the reasons reflected in the record, I'm
22 satisfied that you've established a basis for the relief that
23 you seek, so the request to approve the -- very sorry about my
24 voice, the final fee application of the ordinary course

1 professionals will be granted as reflected in the record, and
2 you will submit a proposed order on consent as to form at the
3 Office of the United States Trustee, Metropolitan National
4 Bank, and the City of New York, and I will add that to the
5 other --

6 MR. KUSHNER: And that's as to each professional,
7 your Honor, correct?

8 THE COURT: Yes.

9 MR. KUSHNER: Thank you, your Honor.

10 THE COURT: All right.

11 MR. KUSHNER: The next matter going quickly, I
12 believe is --

13 THE COURT: Bryan Cave.

14 MR. KUSHNER: -- 19. It is Bryan Cave. Bryan Cave
15 was retained as the debtor's special counsel. The work that
16 was done was primarily done through Phyllis Arnold, who I'd
17 like to state for the record is a consummate professional.
18 She worked extremely hard and probably had the most difficult
19 job dealing with all the attendant needs to address the
20 debtor's signs and the legality of those signs.

21 Their fee application -- this is their -- this is a
22 final one, but they are also seeking their second interim fee
23 request of \$250,216.25 for fees, expenses for the second
24 interim period of \$38,778.81. Bryan Cave is seeking a

1 holdback from their first fee application of \$62,568.90, for a
2 total new request of \$351,563.96, and if the Court grants that
3 then that would approve a final total award for the entire
4 case of \$446 -- I'm sorry, \$446,607.42.

5 THE COURT: All right.

6 MR. KUSHNER: Again, the work that was done Bryan
7 Cave is set out specifically in the application.

8 THE COURT: I want to indicate my agreement with the
9 work done by the firm and Ms. Arnold and by the other
10 professionals in the case who were part of the process that
11 led to that step in moving this case forward. It was I think
12 a turning point in the case, and in my view there's plenty of
13 credit to go around to all of you for taking that kind of an
14 approach, going along with that kind of an approach,
15 contributing to implementing it in this case, and then we were
16 also fortunate to have, as you say, such a consummate
17 professional to fill that role.

18 Noting the positions that have been taken and with
19 the limitations as to the relief that would be granted as also
20 previously indicated, would anyone else like to be heard
21 further on this matter?

22 No response. For all the reasons reflected in the
23 record the motion is granted as reflected in the record.
24 Please submit a proposed order on consent as to form of the

1 United States Trustee, the City of New York, and Metropolitan
2 National Bank.

3 MR. KUSHNER: Yes, your Honor. Thank you. And the
4 last fee application is number 21 on the calendar.

5 THE COURT: Yes.

6 MR. KUSHNER: That is the application of Roth and
7 Company. They are the debtor's accountants. They seek in
8 their final application an award for the second interim
9 period, which is for \$21,033.75, no expenses, and a first
10 holdback award of \$4,825.95, for a total new request of
11 \$25,859.70. With the prior interim award of \$19,303.80 from
12 the first application, they're seeking approval of \$45,163.50.

13 Roth and Company was extremely helpful to my firm.
14 They worked with us very closely in generating documents that
15 were needed in the context of the amended plan and disclosure
16 statement. They did some nice work with the taxing
17 authorities, the state, and the Court's familiar with all of
18 the tax claims that were made in this case.

19 All of their work is set out in the application
20 itself, and debtor would request that these fees be granted.

21 THE COURT: All right. With the same limitations as
22 to the anticipated relief and in the same context, would
23 anyone else like to be heard on this?

24 No response. For all the reasons reflected in the

1 record, I'm satisfied that the final motion for costs and fees
2 of Roth and Company as CPA's and accountants for the debtor
3 should be approved as reflected in the record. Please submit
4 a proposed order on consent as to form with the Office of the
5 United States Trustee, New York City, and Metropolitan Bank,
6 as reflected on the record.

7 All right. Mr. Kushner --

8 MR. KUSHNER: The last --

9 THE COURT: -- I think it's time to move --

10 MR. KUSHNER: The motion to dismiss, your Honor.

11 THE COURT: Yes.

12 MR. KUSHNER: Which I guess is number 16 on the
13 calendar.

14 THE COURT: Yes, it is.

15 MR. KUSHNER: As the Court's already heard today,
16 this is a byproduct of a negotiation between the debtor's
17 largest creditors and the Office of the United States Trustee.
18 It is a motion that was served on all creditors, parties in
19 interest, notice of that. There were no objections to the
20 dismissal of the case.

21 The reasons very briefly articulated for the
22 dismissal as opposed to conversion is that while the debtor
23 believes that it has some sort of viable business, the process
24 of going forward in state court is intensive and time

1 consuming, and takes -- it's not a process that can occur
2 overnight. As a result of that, that left various
3 uncertainties as to the debtor's ability to confirm a plan
4 because its ability to confirm a plan was dependent of course
5 on its revenue-generating sources, which of course are the
6 signs.

7 The Court has already ruled that various limitations
8 that exist under the Bankruptcy Code vis a vis, for example,
9 the automatic stay did not apply to the City, so this case has
10 really shifted from one being concentrated here to one in
11 state court. Apparently all of the major players here agreed
12 with that, and for that reason there was a consensual
13 resolution of how to deal with the disposal of the case.

14 So for those reasons, I suggest -- I'd ask that the
15 Court grant the motion to dismiss, and do so here. We were
16 told by the bank that because of the documents being signed by
17 the debtor and the debtor's principal dealing with the long-
18 term relationship with the bank, that the bank wanted to add
19 some additional language to the dismissal order, so we would
20 ask the Court to grant the application with an order to
21 follow.

22 THE COURT: All right. The matter before the Court
23 is this debtor's motion to dismiss its Chapter 11 case with
24 prejudice and a bar to refileing a case in this Chapter for

1 nine months. Service was good. The Court is certainly
2 familiar with both the substance of the issues that underlie
3 the motion and the process that led to this uncontested motion
4 to dismiss. I'm satisfied that the grounds that the debtor
5 has advanced for the relief meet the applicable standard.

6 I note that the determination of such a motion is
7 committed to the sound discretion -- the wide and sound
8 discretion of the Bankruptcy Court under the applicable case
9 law.

10 Would anyone else like to be heard on this matter?

11 MR. TROTTER: Your Honor, Richard Trotter on behalf
12 of Metropolitan National Bank.

13 THE COURT: Yes.

14 MR. TROTTER: I was believe this was alluded to
15 earlier by Mr. Kushner, but just to echo the statements we
16 made in our response to the debtor's motion, as Mr. Kushner
17 alluded to, the documents between the debtor and Metropolitan
18 National Bank are in the process being finalized. Provided
19 that the final dismissal order incorporates by reference in
20 some fashion the debtor's obligations under those yet to be
21 finalized documents, then Metropolitan National Bank would
22 have no opposition to the granting of that order subject to
23 that one contingency. We anticipate that the documents will
24 be finalized and executed some time in the next 24 to 48

1 hours.

2 THE COURT: All right.

3 MR. KLEINMAN: Your Honor, just for the record, I
4 just want to note that the context of the motion to dismiss
5 was also part of a larger picture where there was motions to
6 convert and various claims that --

7 THE COURT: There is no doubt.

8 MR. KLEINMAN: Okay. Just to make that clear.

9 THE COURT: But it's worth noting.

10 MR. KLEINMAN: And specifically with the details of
11 this motion, the negotiated resolution was that the motion to
12 dismiss order should recite that there will be no filing by
13 the debtor in Bankruptcy Court again for a period of nine
14 months.

15 THE COURT: Yes.

16 MR. KLEINMAN: And that was part of --

17 THE COURT: In Chapter 11. That's the indication
18 that's before me is that limitation?

19 MR. CURTIN: Well, your Honor, let me jump in here
20 because --

21 THE COURT: Or is it under any Chapter?

22 MR. CURTIN: No. Mr. Kleinman is referring to
23 something, but he's not actually saying what he means. What
24 he's referring to is, your Honor, as your Honor well knows

1 because it's your Honor's orders, and every order I've ever
2 seen you enter, and I think of every judge that's in this
3 Court, when there's an order dismissing a case with prejudice
4 there's language saying the case is dismissed with a bar to
5 refiling absent prior written consent -- prior consent of --
6 prior authorization from the Court --

7 THE COURT: Obtained on notice.

8 MR. CURTIN: -- obtained on notice, blah, blah,
9 blah.

10 THE COURT: Right.

11 MR. CURTIN: So what Mr. Kleinman is saying without
12 saying is that he has a problem -- I think has a problem with
13 that language that your Honor has in every order. He wants
14 just "You can't file."

15 THE COURT: I'm grateful for the clarification. Mr.
16 Kleinman, it would be improvident for me to bind this Court in
17 the future should an application be made on changed
18 circumstances with notice and an opportunity to be heard. I
19 suspect that even without that language in an order that would
20 still be the case because any order is subject to any further
21 order of a court.

22 Now, you can agree to what you wish, but at the end
23 of the day the judge, whether it's me or someone else, is the
24 one that determines what goes into the order that the judge

1 signs.

2 MR. KLEINMAN: Then I would just --

3 THE COURT: It takes nothing away from the
4 consequence of the proceedings that have been described, in my
5 view.

6 MR. KLEINMAN: Okay. Then I would request that that
7 order provide that any application to you prior to that nine-
8 month period be on notice to the City in addition to the other
9 parties.

10 THE COURT: I think that's appropriate.

11 MR. CURTIN: I think that's entirely appropriate.

12 THE COURT: I think that's appropriate.

13 MR. KUSHNER: We circulated an order last night, and
14 certainly Mr. --

15 MR. CURTIN: But I don't think the order that Mr.
16 Kushner circulated had the City as a party.

17 THE COURT: You can take a look at that --

18 MR. CURTIN: I think it absolutely should be --

19 THE COURT: -- when I give you your very short
20 break.

21 MR. CURTIN: They should be included.

22 THE COURT: But it's sensible and appropriate in
23 view of the enormous role the City of New York, not only in
24 this case, but in the enterprise of this debtor.

1 Would anyone else -- under the order, I'm focusing
2 on the relief. Would anyone else like to address the merits
3 of the motion?

4 All right. For all the reasons reflected in the
5 record, noting that it has been a long path to this point and
6 a path that has hopefully caused the debtor and the various
7 parties in interest to make significant progress in how the
8 business conducted and to improve its prospects significantly,
9 I am going to grant the motion to dismiss this case and to bar
10 refiling as described in the terms as put forth on the record
11 for a period of nine months from the entry of the order, and
12 will ask the parties to submit an appropriate proposed order
13 on consent as to form with the Office of United States
14 Trustee, the City of New York, and Metropolitan National Bank.

15 MR. KUSHNER: Yes, your Honor.

16 THE COURT: All right.

17 MR. KUSHNER: Thank you, Judge.

18 THE COURT: Let's come back to the matters that
19 remain on the calendar because I think we do need it seems for
20 the sake of good order, so to speak, a continuation date. I
21 also note that should somehow this case not be dismissed, we
22 can restore matters to the calendar, and so perhaps at least
23 in the Court's view, that might be a more appropriate way to
24 address those matters.

1 MR. CURTIN: That's fine with me, your Honor. We
2 can do it that way too.

3 THE COURT: All right. As to the motion to convert
4 then, the case having been dismissed with an order to be
5 submitted, that will be marked off and so ordered, number 3 on
6 the calendar.

7 As to the motion to use cash collateral, that will
8 be marked off, Mr. Kushner?

9 MR. KUSHNER: Well, it should be granted through
10 dismissal.

11 THE COURT: You want to -- the record reflects that
12 it would be appropriate to grant in part as reflected in the
13 record, and you'll be submitting a proposed order extending
14 use of cash collateral through dismissal of the case --
15 through dismissal, and I'll be looking for that. Those
16 perhaps could come in together.

17 With respect to the hearing on the issues raised
18 with respect to compliance and non-compliance, that will be
19 marked off, so ordered. Of course if things take a dramatic
20 and unanticipated turn things could be restored if necessary.
21 I do believe that takes us through the entire calendar. Is
22 that correct?

23 MR. KUSHNER: Yes, your Honor.

24 THE COURT: All right. I'm going to take a very,

1 very short break, and perhaps Ms. Jackson can give the parties
2 a sense of what we'll be calling next, and I'll just say this.

3 I've learned an enormous amount about an enormous range of
4 things from this case, and I've had the opportunity to see
5 some tremendously tenacious and zealous and also just some
6 plain tremendous lawyering in this case, and I thank each and
7 all of you for your hard work in the case. It's been an
8 interesting and hopefully productive matter for all of us.
9 Ultimately I think we have ended up though with a dismissal,
10 hopefully a dismissal that leaves the parties in a posture
11 that is better than that in which you came before this Court
12 in August of 2012, Mr. Kushner?

13 MR. KUSHNER: '11.

14 THE COURT: '11. August 2011. I recall our first
15 hearings, the temporary order of remarkable longevity. Thank
16 you for giving me the opportunity to consider that issue some
17 time ago. A business that in our high-tech world still relies
18 on low-tech communication tools here in the City of New York
19 to get the word out about various goods and services, a
20 business that I gather still continues, and hopefully through
21 the productive engagement that I have urged, encouraged, and
22 cheerlead for over the years of this case between OTR and
23 the City, that that will continue, and I'll just say this. I
24 wish you all. Thank you for a very interesting case.

1 MR. KUSHNER: Thank you, Judge.

2 THE CLERK: All rise.

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4 * * *

5 **CERTIFICATION**

6
7 I, Catherine Aldrich, certify that the foregoing is a correct
8 transcript from the electronic sound recordings of the
9 proceedings in the above-entitled matter.

10
11 

December 18, 2013

12 Catherine Aldrich